interest from the date of the service of the summons.

b) Anand Paranjothy –
$1,000/– for the 3 lacerations and haematoma at 8% interest from the date of the service of the summons.

c) Parvathy Devi Paranjothy –
$750/– for her lacerations at 8% interest from the date of the service of the summons.

4) Costs to plaintiffs as taxed or agreed.

Order accordingly.

Solicitors: *R.K. Nathan; Sodhy Yaacob.*

CHONG SOW YING & ANOR. v. OFFICIAL ADMINISTRATOR

[O.C.J. (Shaik Daud J.) August 12, 1983]

[Kuantan – Civil Suit No. 421 of 1976]

Road Traffic – Fatal accident – No witnesses – Inference from sketch plan & photographs.

Damages – Quantum – Fatal accident – Dependency claim – Income tax assessment not conclusive.

This suit arose as a result of a collision between car No. C. 6917 driven by one Tung Mun (deceased) and the car No. CB. 2486 driven by one Mohamed (also deceased). The 1st plaintiff was the widow and administrator of the estate of Tung Mun. The defendant originally was the Official Administrator but later was substituted by Bidah bte. Daud, the widow of Mohamed.

The collision occurred on May 30, 1974 near 32 ms. Kuantan/Kemaman Road. There were no eye-witnesses to the collision. The drivers of both vehicles died in the collision. The court was therefore left with only the sketch plan, photographs of the damages to both vehicles to decide as to the liability. Both parties agreed that the collision took place on a straight stretch of road and that the driver of vehicle C. 6917 was proceeding towards Kemaman and the driver of vehicle CB. 2486 was proceeding from the direction of Kemaman towards Kuantan.

The sketch plan and photographs revealed that this was not a head-on collision. The point S in the sketch would indicate the point of impact which is on the other side of the road as one faces Kuantan. It shows that vehicle CB. 2486 which was being driven from Kemaman to Kuantan had gone on to the other side of the road that is in the path of the oncoming vehicle C.6917 which was being driven from Kuantan towards Kemaman.

The deceased plaintiff was 60 years old. The widow said that she received $1,000 per month from him for household expenses. There was no evidence of the deceased's actual monthly earnings and the court had to rely on the widow's evidence. The defence produced the deceased's income tax assessment for 1973 which showed that he was assessed for $501.08 and from this it was deduced that his nett average earnings could not be more than $800/– per month.

Held (1) every evidence available points to the driver of car CB. 2486 being on the wrong side of the road thereby resulting in the collision. The driver of car CB. 2486 was therefore solely liable.

(2) merely producing an income tax assessment could not show the actual earning without more details of deductions, etc. The widow's evidence on the amount she used to receive from her late husband had not been disproved. In the circumstances a dependency of $500 was a fair and reasonable figure to arrive at. Having regard to the accused's age of 61, a multiplier of 6 years would be reasonable;

(3) general damages of $36,000/– and special damages of $945/- were allowed.

CIVIL SUIT.

Mahindar Singh for the plaintiff.
B.M. Bodipalar for the defendants.

Cur. Adv. Vult.

Shaik Daud J.: This suit arose as a result of a collision between car No. C.6917 driven by one Tung Mun @ Tung Mun Yoke (deceased) and the car No. CB. 2486 driven by one Mohd. b. Haji Abas (also deceased). The plaintiff, Madam Chong Sow Ying, is the widow and administratrix of the estate of Tung Mun @ Tung Mun Yoke. The defendant originally was the Official Administrator but later substituted by Bidah bt. Daud, the widow of Mohd. b. Haji Abas. At the outset of the trial both parties informed the Court that they had agreed to the special damages a total of $945.00 made up as follows:–

Funeral expenses	$500.00
Administrative expenses	$400.00
Cost of documents	$45.00

The said collision occurred on May 30, 1974 at or near the 32nd milestone Kuantan/Kemaman Road. There were no eye-witnesses to this collision and the drivers of both vehicles died in the collision. As there were no eye-witnesses to the collision the court is left with only the sketch plan, photographs of the damages to both vehicles to decide as to the liability. Both parties agreed that the collision took place on a straight stretch of road and that the deceased driver of vehicle C.6917 was proceeding from the direction of Kuantan towards Kemaman and the deceased driver of vehicle CB. 2486 was proceeding from the direction of Kemaman towards Kuantan.

From the sketch plan and photographs it is evident that this was not a head-on collision. The point S in the sketch would indicate the point of impact which is on the other side of the road as one faces Kuantan. From this it is abundantly clear that the vehicle CB. 2486 which was being driven from Kemaman to Kuantan had gone on to the other side of the road that is in the path of the oncoming vehicle C.6917 which was being driven from Kuantan towards Kemaman.

Counsel on behalf of the defendant contends that looking at the sketch plan there were possible explanations as to why the defendant's vehicle went on to the other side of the road. Finally he contends that both the vehicles were travelling at high speed, as the road was not a speed restricted road. He contends that it was the plaintiff who could have encroached onto the path of the defendant and on seeing this the defendant swerved on to the other side. Plaintiff on realising that he had gone on to the wrong side swerved back and came right to the edge of the road where the collision occurred. As such he contends that both drivers were equally to be blamed. The second explanation put forward is that both vehicles were travelling in the same direction i.e. from Kemaman towards Kuantan and just before the collision plaintiff must have made a U turn in order to go back towards Kemaman and caused the accident.

With respect I cannot agree with either of the explanations put forward. To accept either explanation would be going smack against the sketch plan and photographic evidence. Both explanations are mere conjectures without any shred of evidence to support. As for the first explanation the sketch plan shows quite clearly that the vehicle C.6917 can only be travelling from Kuantan towards Kemaman on its right side of the road and no reason to show why he had to go to the other side of the road and later swerve back to hit car CB. 2468. To accept the first explanation I am of the opinion that the collision would not have happened, and if it did the damages would be more on the opposite sides to the damages shown in the photographs. As for the second explanation I simply cannot comprehend how it could have been suggested at all in view of the agreed facts that the car C.6917 was travelling in the direction of Kuantan to Kemaman and the car CB. 2486 in the opposite direction. Furthermore, we have the evidence of the plaintiff that her husband that morning left to go to his work site in Kemaman. In fact there are no explanations at all. As I said the explanation put forward has no basis whatsoever and cannot be accepted. The defence also contends that the principle of *res ipsa loquitur* does not apply in this case. I beg to differ. As there are no eye-witnesses to the accident and as I held that there are no explanations as to why the car CB. 2486 came across the road in the path of car 6917 *res ipsa loquitur* must necessarily apply. This in fact is being heavily relied on by the plaintiff. As that principle applies it is for the defence to show and somehow contradict the evidence as can be found in the sketch plan viz. that it was car CB. 2486 which for no apparent reason encroached onto the path of car C.6917. This is fortified by the apparent point of impact being on the extreme edge of the road as one faces Kemaman of which, I am of the opinion, there can be but one explanation and that is that the driver of car C. 6917 on realising the encroaching CB. 2486 veered to his left in order to avoid the collision but failed. From this I am of the considered view that there is not one shred of evidence to show that the driver of car C. 6917 was in any way negligent or liable for this collision. On the contrary, the driver of car CB. 2486 has solely caused this collision by suddenly going on to the other side of the road and thereby encroaching on to the rightful path of car C. 6917. Why he did this is unknown as he himself died in the collision. Every evidence available points to the driver of car CB. 2486 being on the wrong side of the road thereby resulting in the collision. On this ground I hold the driver of car CB. 2486 to be solely liable.

As for quantum evidence disclosed that deceased plaintiff was a man of 60 years old. The widow testified that deceased used to give her $1,000/– per month for household expenses out of which she could save around $200.00 to $300.00 per month. Out of the amount given her she could also engage a servant. It is conceded that there is no evidence of deceased's actual monthly earnings and the court has to rely on the evidence of his widow on this. Although the widow was subjected to lengthy cross-examination by Counsel she appeared not to be shaken. The defence produced the deceased's income tax assessment for 1973 which showed that he was assessed $501.08 and from this it was deduced that his net average earnings could not be more than $800.00 per month. With respect I am of the view that merely producing an income tax assessment one cannot show the actual earning without more details of deductions and so on. Defence contention that deceased could not have given his wife more than $300.00 per month also cannot hold water because with $300.00 per month it would be impossible

for her to engage a servant, keep house and be able to save. In view of this, I am more inclined to accept her evidence that she was getting around $1,000 per month. Evidence of PW. 2 Kassim b. Abdullah who worked for deceased plaintiff showed that deceased's earnings would be more than the $800.00 as contended by defence. PW. 2's evidence on this has not been challenged or broken, on the contrary, his cross-examination has rather strengthened the plaintiff's contention. I am satisfied that PW. 1's evidence on the amount she used to receive from her late husband has not been disproved. In any case, I am also of the view that it is most unreasonable not to accept this figure in view of the style of living by plaintiff and his family and the type of business deceased was engaged in. After taking all these factors into consideration, I am of the view that in the circumstances a dependency of $500.00 is a fair and reasonable figure to arrive at. Although deceased was 61 years old, the photograph of his body showed that he was a robust 61 year-old and I believe he has to be especially in the kind of business he was engaged in when he had to travel almost daily to his work site. On this consideration I am of the view that a multiplier of 6 years is fair and reasonable.

In the event, I held the deceased defendant, the driver of car CB. 2486 to be 100% liable and gave judgment to the plaintiff. I awarded general damages in the sum of $36,000.00, special damages $945.00. As the accident occurred in May 1974 the money should have been paid long ago. In the event, I also awarded interest at 3% per annum on special damages from the date of accident to the date of judgment, 6% per annum on general damages from date of service of writ to the date of judgment and 6% per annum on general and special damages from date of judgment to the date of satisfaction.

Order accordingly.

Solicitors: *Mahindar Singh & Co.; Balendran, Chong & Bodi*

MISKINAH BTE. JAYA & ORS. v. MOHAMED BIN SALLEH & ANOR.

[O.C.J. (Shankar J.) August 16, 1983]
[Johore Bahru – Civil Suit No. 61 of 1979]

Road Traffic – Fatal accident – Duty of motorist when following another to take care of his own safety by not following too close.

Road Traffic – Fatal accident – Defendant unaware that there had been accident involving his bus – Inference of negligence by court.

The deceased, Abdul Talib, was riding a motorcycle along Jalan Rengam towards Kluang. He arrived at the junction of that road and a side road on his right leading to the new village of Sungei Sayong. His body was found lying across the centre of the road.

The defendant, the driver of the bus said that he did not know of any collision. He had heard nothing and had seen nothing. He had travelled from Sungei Sayong junction to Kluang, in blissful ignorance that anything was amiss. When told by the police there had been an accident involving his bus, he denied and refused to accept that the scratch marks found by the police had anything to do with any accident. Had there been one, the conductor and passengers would have alerted him but they did not.

The court found as a fact that the deceased did collide with the rear of the bus and that the force of the impact catapulted him into the air to the right.

Held: (1) the defendant's lack of knowledge of any accident must imply a finding that he was driving without due care and attention, and had not been keeping a proper look-out. On this count alone some negligence must be laid at his door;

(2) a motorist who is following another has a duty to take care of his own safety by not following too close. It behoves him to drive within the limits of his vision subject of course to the caveats placed on other motorists in front of him stopping abruptly on a main highway;

(3) the deceased and the defendant were equally to blame. The deceased should not have attempted to overtake when there was an oncoming lorry, or at the very least should have been able to pull up. The defendant who should have both the oncoming lorry in sight, and the motor cyclist in his rear view mirror, should have made appropriate allowances before slowing down, particularly as there was no compulsion for him to stop at the junction and not a little beyond.

(4) general damages was agreed at $24,200 and special damages at $800. Judgment for the plaintiffs was therefore for $12,500.

Per curiam: "The accident here occurred on April 16, 1978, nearly 5½ years ago. It makes life difficult for everyone if cases are not despatched with due expedition, not least for counsel who may no longer be able to trace witnesses and even when they find them, discover that they are left to make bricks without straw because their witnesses' memories have failed them".